

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 24.17.127, relating to prevailing)
wage rates for public works projects using)
building construction services,)
heavy construction services, and)
highway construction services)

TO: All Concerned Persons

1. On April 24, 2008, the Department of Labor and Industry published MAR Notice No. 24-17-229 regarding the public hearing on the proposed amendment of the above-stated rule on page 765 of the 2008 Montana Administrative Register, issue no. 8.

2. On May 16, 2008, a public hearing was held at which time members of the public made oral and written comments and submitted documents. Additional comments were received during the comment period.

3. The department has thoroughly considered the comments and testimony received from the public. The following is a summary of the public comments received and the department's response to those comments:

Comment 1: Rion Miles, International Union of Operating Engineers Local 400, noted that a petition is circulating to increase the highway construction rates for Construction Equipment Operators and has asked the department to allow time for the petition to circulate and then adopt the new federal highway construction rates. Jay Reardon, Laborers International Union of North America Local No. 1686, echoed the comment.

Response 1: As with the building construction rates, those for heavy and highway construction are set annually by the commissioner pursuant to ARM Title 24, chapter 17, subchapter 2. Although there may be a petition for revised federal rates circulating, there is no fixed date for the submission of that petition, nor is there a fixed date for a federal response to the petition. In light of the uncertainty of the timing of federal agency response, the department concludes that the better course of action is to adopt the heavy and highway construction services rates at this time, rather than delay adoption until a later date.

Comment 2: Rion Miles noted that new federal rates for heavy construction, general decision MT080001, were implemented on May 16, 2008. The commenter asked that this revision take the place of the current proposed rates for heavy construction. Jay Reardon also made the same request.

Response 2: The department notes that the May 16, 2008, federal rate changes were not available at the time the department submitted the proposed rates to the Montana Secretary of State's office for publication in the Montana Administrative Register. Pursuant to 2-4-307, MCA, the department cannot incorporate by reference documents or rates not yet in existence at the time the notice of proposed action was published. Adoption of the rates contained in general decision MT080001 would require the department renoticing and publishing the heavy and highway construction services rates. Rather than delay by 90 or so days the adoption of heavy and highway construction rates at this time, the department concludes that it should adopt the heavy and highway rates as proposed.

Comment 3: Rion Miles noted that nonunion companies are either not reporting all benefits, travel, and per diem paid to employees or not reporting them correctly, thereby skewing the results of the survey. Specifically the commenter mentioned that safety pay is not being reported as benefits.

Response 3: Initially, the department notes that an employer's submission of data is voluntary. The department also notes that by signing the survey response form the employer is making the representation that all information being provided in the response is true and correct.

Section 18-2-412(2), MCA states that "The fringe benefit fund, plan, or program . . . must provide benefits to workers or employees for health care, pensions on retirement or death, life insurance, disability and sickness insurance, or bona fide programs that meet the requirements of the Employee Retirement Income Security Act of 1974 or that are approved by the United States department of labor", and be a "irrevocable contribution". The department concludes that so-called "safety pay" should not be counted as it does not fit the definition of a benefit outlined in ERISA because it may or may not be paid out, depending on the safety record of the employee (or of the work unit) and is therefore not guaranteed or irrevocable.

Comment 4: Rion Miles states construction of "major structures" should have more weight in the survey than the construction of residential buildings.

Response 4: State law does not appear to allow the department to more heavily weight survey responses based upon the size of the structure or project. However, as noted in the survey information, residential work is not to be reported in the survey.

Comment 5: Rion Miles questioned the rates set for Construction Equipment Operators Group 2 for wages and fringe benefits in districts 3, 4, and 8; the fringe benefits in districts 5 and 6; the rates set for Construction Equipment Operators Group 3 for wages and fringe benefits in districts 1, 6, and 8; and the rates set for Construction Equipment Operators Group 6 for fringe benefits in district 8.

Response 5: The department has reviewed the wages and benefits set for Operating Engineers, and revised certain rates as noted in paragraph 4.

Comment 6: Rion Miles stated that all tower crane operators have been moved from Construction Equipment Operators Group 5 to Construction Equipment Operators Group 7.

Response 6: The department has taken note of the change and will update the final publication to reflect the move of all tower crane operators from Group 5 to Group 7.

Comment 7: Rion Miles noted that the Operating Engineers no longer use certain locations for dispatch points, but these locations are still listed in the prevailing wage publications. Mr. Miles asked if the publications could be revised to reflect this change.

Response 7: For building construction purposes, the Commissioner of Labor has determined the ten prevailing wage districts in accordance with 18-2-411, MCA. Each district has a designated city for computing travel pay within that district. For heavy construction and highway construction purposes the department adopts federal Davis-Bacon determinations; therefore, the towns listed in those determinations for computing travel pay are the ones used by the state of Montana.

Comment 8: Keith Allen, International Brotherhood of Electrical Workers Local 233, questioned the wages, fringe benefits, and travel pay for electricians in all districts.

Response 8: The department has reviewed the wages, benefits, and travel rates set for the Electricians classification. Based upon the review of the data submitted the department has revised certain rates as noted in paragraph 4.

Comment 9: Keith Allen questioned why the union rates in Districts 2, 6, 8, and 10 for the Telecommunications Equipment Installers and Repairers, Except Line Installers, did not prevail.

Response 9: The department has reviewed the wages and benefits set for Telecommunication Equipment Installers and Repairers in all districts. Based upon that review, the department has revised certain rates as shown in paragraph 4. The department notes that a wage or benefit rate set by a collective bargaining agreement (CBA) does not necessarily establish the prevailing rate in a district.

Comment 10: Keith Allen suggested that the individual survey results be part of public record.

Response 10: The department has modified its survey response forms to remove language that stated the response was confidential. Accordingly, the department believes that survey response forms are open to inspection by the public (subject to claims of privacy or other legally protected interests that may outweigh the public right to know).

Comment 11: Rick Toland, Road Sprinkler Fitters Local 669, stated that the rates reflect last year's CBA and a new CBA came into effect in April 1, 2008.

Response 11: The department concludes that the CBA from 2007 is the correct CBA to reference for the survey year of 2007.

Comment 12: Jim Ryan, Sheet Metal Workers International Association Local 103, questioned the rates set for the Sheet Metal Workers in all districts.

Response 12: The department has reviewed the wage and benefit rates set for Sheet Metal Workers and has revised certain rates as shown in paragraph 4.

Comment 13: Jay Reardon, Laborers International Union of North America Local 1686, stated that the fringe benefit in the CBA for Laborers in all groups and districts is \$6.36. The department received multiple comments requesting that the department review rates for the Laborers classifications.

Response 13: The department reviewed the wage and benefits information for the Laborers classifications, and has revised the rates as shown in paragraph 4. The department notes that a wage or benefit rate set by a CBA does not necessarily establish the prevailing rate in a district.

Comment 14: Dave Warner, Pacific Northwest Regional Council of Carpenters, questioned the wage and fringe benefit rates in all districts within the Carpenter occupations.

Response 14: The department has reviewed the wages and benefits set for Carpenters. Based upon the review, the department has revised certain rates as shown in paragraph 4. The department also notes that wages and fringes for all districts for Millwright, Pilebuck, and Drywall Applicators are different than the Carpenter rates and will change to reflect the wages and fringes for their respective occupations as contained within the carpenters CBA, and will be shown as such in the final rate publication.

Comment 15: Gary Phillips, Heat and Frost Insulators and Allied Workers Local 11, questioned the rates in all districts for the Insulation Workers – Mechanical – Heat and Frost.

Response15: The department has reviewed the wages and benefits set for Heat and Frost Insulators and revised certain rates as shown in paragraph 4.

Comment 16: Marlin Overton, Bricklayers and Allied Craft Workers Local 3, asked the department to look at the rates for Brick, Block, and Stone Masons and Tile and Marble Setters.

Response 16: The department has reviewed the wages and benefits set for Bricklayers and Allied Craft Workers and has revised certain rates as shown in paragraph 4.

Comment 17: Shaun Sullivan, Operative Plasterers and Cement Masons International Association, questioned wage and fringe benefit rates in all districts for the Plasterers occupation. Mr. Sullivan believes the Cement Masons occupation should be covered by the Plasterers collective bargaining agreement instead of the Bricklayers CBA.

Response 17: The department has reviewed the collective bargaining agreements for Bricklayers Local 3 and the Plasterers Union. The department has determined that the Cement Mason occupation is covered under the Plasterers collective bargaining agreement. The department has also reviewed the wages and benefits set for Plasterers and Cement Masons. The department has revised certain rates as shown in paragraph 4.

Comment 18: The department received a CBA from the Boilermakers Union Local #11.

Response 18: The department has reviewed the information provided and has revised certain rates as shown in paragraph 4.

4. The department has amended the rule as proposed. Changes to the building construction services rates are as follows, matter to be stricken interlined, new matter underlined:

Brick, Block, and Stone Masons

District	Wage	Benefit
1	\$24.50	\$8.12 <u>\$9.16</u>
2	\$24.12 <u>\$24.50</u>	\$8.12 <u>\$9.16</u>
3	\$24.50	\$8.12 <u>\$9.16</u>
4	\$23.03	\$8.12 <u>\$9.16</u>
5	\$23.03	\$8.12 <u>\$9.16</u>
6	\$23.03	\$8.12 <u>\$9.16</u>
7	\$23.03	\$8.12 <u>\$9.16</u>
8	\$23.03	\$8.12 <u>\$9.16</u>
9	\$23.03	\$8.12 <u>\$9.16</u>
10	\$23.03	\$8.12 <u>\$9.16</u>

Boilermakers

District	Wage	Benefit
1	\$24.81 <u>\$28.41</u>	\$16.51 <u>\$17.97</u>
2	\$24.81 <u>\$28.41</u>	\$16.51
3	\$24.81 <u>\$28.41</u>	\$17.97
4	\$24.81 <u>\$28.41</u>	\$17.97
5	\$24.81 <u>\$28.41</u>	\$17.97

6	\$24.81 <u>\$28.41</u>	\$17.97
7	\$24.81 <u>\$28.41</u>	\$17.97
8	\$24.81 <u>\$28.41</u>	\$17.97
9	\$25.77	\$17.97
10	\$24.81 <u>\$28.41</u>	\$17.97

Carpenters

District	Wage	Benefit
1	\$17.04 <u>\$18.09</u>	\$5.35 <u>\$5.76</u>
2	\$18.70 <u>\$18.46</u>	\$8.20 <u>\$6.64</u>
3	\$19.55 <u>\$17.49</u>	\$7.90 <u>\$6.97</u>
4	\$15.56 <u>\$17.49</u>	\$7.60 <u>\$7.90</u>
5	\$15.45 <u>\$17.49</u>	\$5.64 <u>\$7.73</u>
6	\$17.52 <u>\$16.87</u>	\$4.89 <u>\$5.82</u>
7	\$17.49 <u>\$17.44</u>	\$7.90
8	\$17.49	\$7.90 <u>\$5.04</u>
9	\$16.70 <u>\$16.48</u>	\$2.31 <u>\$7.90</u>
10	\$15.47 <u>\$17.49</u>	\$7.90

Cement Masons

District	Wage	Benefit
1	\$13.75 <u>\$15.47</u>	\$4.95 <u>\$3.66</u>
2	\$17.17	\$9.65 <u>\$6.50</u>
3	\$24.50 <u>\$19.40</u>	\$8.12 <u>\$6.80</u>
4	\$13.75 <u>\$18.29</u>	\$4.95 <u>\$6.80</u>
5	\$13.75 <u>\$18.29</u>	\$4.95 <u>\$6.80</u>
6	\$13.75 <u>\$18.29</u>	\$4.95 <u>\$2.00</u>
7	\$13.75 <u>\$18.29</u>	\$4.95 <u>\$6.80</u>
8	\$23.03 <u>\$18.29</u>	\$8.12 <u>\$6.80</u>
9	\$23.03 <u>\$18.29</u>	\$8.12 <u>\$6.80</u>
10	\$23.03 <u>\$18.29</u>	\$8.12 <u>\$6.80</u>

Electricians

District	Wage	Benefit
1	\$25.14 <u>\$26.11</u>	\$7.05
2	\$25.74	\$8.44
3	\$25.74 <u>\$25.50</u>	\$9.20 <u>\$10.14</u>
4	\$25.10 <u>\$25.06</u>	\$8.34 <u>\$8.27</u>
5	\$26.06	\$8.55 <u>\$9.18</u>
6	\$25.14	\$8.40 <u>\$9.46</u>
7	\$24.96 <u>\$26.06</u>	\$8.55 <u>\$9.66</u>
8	\$26.83	\$9.15 <u>\$10.43</u>
9	\$26.06 <u>\$26.83</u>	\$8.55 <u>\$10.43</u>
10	\$23.48 <u>\$26.83</u>	\$9.15 <u>\$10.43</u>

travel pay

District 3

0-10 miles	free zone
11-55 miles	federal <u>mileage reimbursement</u> rate per mile
Over 55 miles	<u>\$50/day in lieu of any other travel time or travel allowance plus federal mileage reimbursement rate to jobsite and return</u>

District 6

0- 17 8 miles	free zone
18 9-60 miles	federal <u>mileage reimbursement</u> rate per mile
over 60 miles	<u>\$55/day in lieu of any other travel time or travel allowance plus federal mileage reimbursement rate to jobsite and return</u>

Districts 4, 5, and 7

0-8 miles	free zone
8-50 miles	federal <u>mileage reimbursement</u> rate
over 50 miles	<u>\$50/day subsistence in lieu of travel allowance per day worked plus federal mileage reimbursement rate to jobsite and return</u>

District 8, 9, and 10

0-17 miles	free zone
18-60 miles	<u>\$0.485 per mile federal mileage reimbursement rate</u>
over 60 miles	<u>\$55/day per diem in lieu of any other travel time or allowance plus federal mileage reimbursement rate to jobsite and return</u>

Heat and Frost Insulators

District	Wage	Benefit
1	\$22.74 <u>\$23.74</u>	\$10.98 <u>\$12.78</u>
2	\$22.74 <u>\$23.74</u>	\$10.98 <u>\$12.78</u>
3	\$22.74 <u>\$23.74</u>	\$10.98 <u>\$12.78</u>
4	\$22.74 <u>\$23.74</u>	\$10.98 <u>\$12.78</u>
5	\$22.74 <u>\$19.00</u>	\$10.98 <u>\$12.78</u>
6	\$22.74 <u>\$23.74</u>	\$10.98 <u>\$12.78</u>
7	\$22.74 <u>\$23.74</u>	\$10.98 <u>\$12.78</u>
8	\$22.74 <u>\$23.74</u>	\$10.98 <u>\$12.78</u>
9	\$22.74 <u>\$23.74</u>	\$10.98 <u>\$12.78</u>
10	\$22.74 <u>\$23.74</u>	\$10.98 <u>\$12.78</u>

Laborers Group 1

District	Wage	Benefit
1	\$15.15	\$7.45 <u>\$6.00</u>
2	\$15.41 <u>\$17.95</u>	\$6.10
3	\$16.40 <u>\$12.87</u>	\$6.00

Laborers Group 2

District	Wage	Benefit
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1	\$15.42	<u>\$16.84</u>	\$4.95	<u>\$6.75</u>
2	\$15.92	<u>\$16.30</u>	\$5.18	<u>\$5.45</u>
3	\$16.20	<u>\$15.65</u>	\$5.90	<u>\$6.00</u>
4	\$16.05		\$5.49	<u>\$5.73</u>
5	\$14.68	<u>\$15.80</u>	\$4.95	<u>\$5.02</u>
6	\$14.32	<u>\$16.04</u>	\$4.45	<u>\$4.80</u>
7	\$13.25	<u>\$19.62</u>	\$4.95	<u>\$6.01</u>
8	\$15.14	<u>\$15.41</u>	\$4.43	<u>\$4.53</u>
9	\$18.13	<u>\$18.84</u>	\$5.56	
10	\$16.33	<u>\$16.53</u>	\$4.45	

Laborers Group 3

District	Wage	Benefit
1	\$17.39	<u>\$18.04</u>
2	\$18.33	<u>\$18.35</u>
3	\$16.54	<u>\$15.79</u>
5	\$17.17	<u>\$19.39</u>
6	\$21.33	<u>\$21.34</u>
10	\$19.30	<u>\$19.09</u>

Laborers Group 4

District	Wage	Benefit
1	\$17.32	\$4.45
3	\$17.26	<u>\$16.51</u>
4	\$17.39	<u>\$16.15</u>
7	\$18.12	<u>\$18.37</u>
8	\$19.29	\$6.02
9	\$16.42	<u>\$16.81</u>

Operating Engineers, group 2

District	Wage	Benefit
3	\$26.61	<u>\$21.99</u>
4	\$24.11	<u>\$21.44</u>
8	\$21.53	<u>\$21.33</u>

Operating Engineers, group 3

District	Wage	Benefit
1	\$19.12	\$5.05

Plasterers

District	Wage	Benefit
1	\$15.50	<u>\$18.29</u>
2	\$16.12	<u>\$18.29</u>
3	\$17.28	<u>\$19.40</u>
4	\$15.50	<u>\$18.29</u>
5	\$16.38	<u>\$18.29</u>
6	\$15.50	<u>\$18.29</u>

7	\$15.50 <u>\$18.29</u>	\$6.80
8	\$15.50 <u>\$18.29</u>	\$6.80
9	\$15.50 <u>\$18.29</u>	\$6.80
10	\$15.50 <u>\$18.29</u>	\$6.80

Sheet Metal Workers

District	Wage	Benefit
1	\$24.49	\$10.22 <u>\$10.56</u>
2	\$24.49	\$10.22 <u>\$10.56</u>
3	\$24.49	\$10.22 <u>\$10.56</u>
4	\$24.49	\$10.22 <u>\$10.56</u>
5	\$24.49	\$10.22 <u>\$10.56</u>
6	\$20.76 <u>\$24.49</u>	\$9.99
7	\$24.49	\$10.22 <u>\$10.56</u>
8	\$22.96	\$9.67
9	\$24.49	\$10.22 <u>\$10.56</u>
10	\$24.49	\$10.22 <u>\$10.56</u>

Telecommunication Equipment Installers and Repairers

District	Wage	Benefit
1	\$20.93	\$5.90 <u>\$6.79</u>
2	\$20.52	\$5.90 <u>\$5.34</u>
3	\$20.93	\$5.90 <u>\$6.79</u>
4	\$20.93	\$5.90 <u>\$6.79</u>
5	\$20.93	\$5.90 <u>\$6.79</u>
6	\$20.83	\$5.90 <u>\$6.88</u>
7	\$20.93	\$5.90 <u>\$6.79</u>
8	\$20.83	\$5.90 <u>\$6.88</u>
9	\$20.93	\$5.90 <u>\$6.79</u>
10	\$20.83	\$5.90 <u>\$6.88</u>

Tile and Marble Setters

District	Wage	Benefit
1	\$17.00	\$8.75 <u>\$2.00</u>
2	\$17.00	\$8.75 <u>\$8.80</u>
3	\$17.00	\$8.75 <u>\$8.80</u>
4	\$17.00	\$8.75 <u>\$8.80</u>
5	\$17.00	\$8.75 <u>\$8.80</u>
6	\$17.00	\$8.75 <u>\$8.80</u>
7	\$17.00	\$8.75 <u>\$8.80</u>
8	\$17.00	\$8.75 <u>\$8.80</u>
9	\$17.00	\$8.75 <u>\$8.80</u>
10	\$17.00	\$8.75 <u>\$8.80</u>

5. The new rates are effective July 18, 2008.

/s/ MARK CADWALLADER

Mark Cadwallader
Alternate Rule Reviewer

/s/ DORE SCHWINDEN

Dore Schwinden, Deputy Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified by the Secretary of State July 7, 2008